

N. KEITH CHAMBERS
EXECUTIVE DIRECTOR

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF:)	
)	
FELECIA COOKE,)	
)	
Complainant,)	Charge No. 2006CF3414
)	EEOC No. N/A
and)	ALS No. 07-462
)	
GOODWILL INDUSTRIES –)	
GREAT LAKES, ILLINOIS,)	
)	Judge Reva S. Bauch
)	
Respondent.)	

RECOMMENDED ORDER AND DECISION

This matter comes before me following a public hearing held on December 11, 2008 on the merits of the Complaint. Complainant appeared *pro se*; Respondent was represented by counsel. At the close of Complainant's case-in-chief, Respondent made a motion for a directed finding, which I granted. Both parties were given the opportunity to file post-hearing briefs. Respondent filed its brief. Complainant submitted several cases for my review. I have reviewed both the brief and cases.

The Illinois Department of Human Rights ("Department") is an additional statutory agency that has issued state actions in this matter. Therefore, the Department is an additional party of record.

Contentions of the Parties

Complainant contends that Respondent subjected her to sex, race, and physical disability discrimination in violation of the Illinois Human Rights Act, **775 ILCS 5/1-101 et seq.** (Act). Respondent contends that Complainant failed to establish a *prima facie* case

of sex, race and physical disability discrimination because she failed to offer sufficient evidence in support of her case.

Findings of Fact

The following findings of fact were derived from the record file in this case and from the public hearing:

1. On June 26, 2006, Complainant filed a Charge against Respondent with the Department.
2. On July 26, 2007, Complainant filed a Complaint with the Commission alleging that Respondent discriminated against her on the basis of her race, sex, and physical disability in violation of the Act.
3. A public hearing was held on December 11, 2008.
4. Complainant appeared *pro se*. Respondent appeared through counsel and a designated company representative.
5. Complainant admitted that she had been given an opportunity to retain counsel to represent her and declined to do so.
6. On February 2, 2006, while employed at Respondent, Complainant had an argument with a co-worker.
7. Respondent issued Complainant a written Corrective Action Notice indicating that she violated Respondent's policy against violence and threats in the workplace, and that any further violations would result in progressive discipline up to and including termination.
8. Complainant was aware of Respondent's policy against violence and threats in the workplace.
9. Complainant understood this corrective action.
10. Complainant signed the notice and acknowledged that she and her supervisors reviewed it together.

11. Complainant was informed and understood that any further violations would result in progressive discipline up to and including termination.
12. Four months later, on June 14, 2006, Complainant was involved in another argument with a different co-worker, Monica Roscoe.
13. Roscoe is a black, non-handicapped, female former food service worker.
14. During the argument, Complainant threatened Roscoe, saying, "I'll get you outside the gate."
15. Two supervisors, Leonard Custard and Antron Dorrough, witnessed the argument and broke it up.
16. During Respondent's investigation of the incident, Complainant provided a statement regarding what happened.
17. Complainant admitted to violating the Respondent's policy against violence and threats in the workplace by using abusive language and threats.
18. Upon completion of its investigation, Respondent determined that both Complainant and Roscoe had violated Respondent's policy.
19. As a result, Respondent terminated Complainant and Roscoe on June 14, 2006.
20. During testimony at the hearing, Complainant stated, "My case is not about race." "...the race don't have nothing to do with my case," and "I'm not here about my case as far as white, black, red, or what other color."
21. Complainant did not introduce any evidence to support her allegation that her ankle disorder was a disability.
22. Complainant did not mention anything about her right ankle disorder during the hearing.
23. Complainant presented one witness: Chris Ward.
24. Chris Ward is black, male and has a handicap.

25. Respondent terminated Ward after he had an altercation with a female co-worker, which was Ward's first violation of Respondent's policy against violence and threats in the workplace.
26. Ward's incident had nothing to do with Complainant's case.
27. Ward was upset with Respondent for discharging him.
28. Complainant admitted that she violated Respondent's policy against threats and violence in the workplace on two separate occasions.
29. At the end of Complainant's case-in-chief, Respondent moved for a directed finding, which was granted.

Conclusions of Law

1. Complainant is an "aggrieved party" and Respondent is an "employer" as those terms are defined in the Act, **775 ILCS 5/1-103(B) and 5/2-101(B)**.
2. The Commission has jurisdiction over the parties and the subject matter of this case.
3. Complainant has failed to prove a *prima facie* case for sex discrimination.
4. Complainant has failed to prove a *prima facie* case for race discrimination.
5. Complainant has failed to prove a *prima facie* case for physical disability discrimination.
6. Respondent is entitled to a directed finding in its favor.

Determination

Complainant has failed to prove a *prima facie* case for sex, race, or physical disability discrimination. Respondent's motion for directed finding should be granted.

Discussion

Standards for Granting Directed Finding

At the close of Complainant's case-in-chief, Respondent moved for a directed finding. The Commission has the authority to consider and grant motions for directed

findings where appropriate. **Yolanda Tate and Walgreen Co., IHRC, 11992, July 22, 2005.**

Following such a motion, a two-step analysis must be applied. **Happel v. Mecklenburger, 101 Ill App3d 107 (1st Dist. 1981).** First, a determination must be made as a matter of law whether the complainant has made out a *prima facie* case by having presented some evidence, more than a scintilla, on every essential element of her cause of action. If the fact-finder cannot make a finding that the complainant was a victim of discrimination after the complainant has put on her case-in-chief, there is no reason to force the respondent to put on a defense. Thus, the motion should be granted if the *prima facie* case has not been established.

However, if the complainant has presented some evidence, the evidence must be weighed, including anything favorable to the respondent, credibility must be weighed, reasonable inferences must be drawn, and the weight and quality of the evidence must be considered. If this weighting process results in the negation of evidence necessary to the complainant's *prima facie* case, the respondent is entitled to judgment in its favor. **Kokinis v. Kotrich, 81 Ill2d 151 (1980).**

Analysis

Thus, the initial inquiry here concerns the demonstration, or lack thereof, of a *prima facie* case. In general, to establish a *prima facie* case for sex or race discrimination, the Complainant must prove: (1) she is in a protected class; (2) she was meeting Respondent's legitimate performance expectations; (3) Respondent took an adverse action against her; and (4) similarly situated employees outside Complainant's protected class were treated more favorably. See **Interstate Material Corp. v. Human Rights Comm'n, 274 Ill App3d 1014 (1995)** (*prima facie* case for race); **Wal-Mart Stores, Inc. v. Human Rights Comm'n, 307 Ill. App3d 264** (*prima facie* case for sex). In addition, to establish a *prima facie* case for physical disability discrimination, the

Complainant must prove: (1) she is "disabled" within the meaning of the Act; (2) her disability is unrelated to his ability to perform her job, or if the disability is related to that ability to perform, after her request, Respondent did not make reasonable accommodations to allow her to perform her job; and (3) Respondent took adverse action against her because of her disability. **Whipple v. Ill. Dept. of Rehabilitative Services, 269 Ill App3d 554 (1995).**

Regarding the race discrimination claim, Complainant asserted during the hearing that her case had nothing to do with race. Complainant's testified, "My case is not about race," and "...the race don't have nothing to do with my case." Further, Complainant failed to show she was performing her job consistent with Respondent's legitimate expectations. The evidence indicated she violated the Respondent's policy against violence and threats in the workplace on two occasions in four months.

Regarding the sex discrimination claim, Complainant failed to show that she was performing her job consistent with Respondent's legitimate expectations. Complainant also failed to show that a similarly situated man was treated more favorably. Chris Ward, the only comparable introduced in the Complainant's case, was terminated after a single altercation with a co-worker. If anything, Complainant was treated more favorably than Mr. Ward.

Regarding the physical disability claim, complainant failed to introduce any evidence that she had a disability. In fact, Complainant did not even mention her disability when presenting her case.

In sum, Complainant has failed to establish a *prima facie* case as to any of her claims.

Recommendation

It is recommended the Commission dismiss this Complaint, and the underlying Charge.

HUMAN RIGHTS COMMISSION

BY: _____
REVA S. BAUCH
DEPUTY CHIEF ADMINISTRATIVE LAW JUDGE
ADMINISTRATIVE LAW SECTION

ENTERED: March 20, 2009